

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA**

KYLIE AMISON,)	
)	
)	
<i>Plaintiff,</i>)	
)	
)	
v.)	Civil Action No.: 1:22-cv-00731
)	
RECTOR AND VISITOR OF GEORGE)	
MASON UNIVERSITY, <i>et al.</i> ,)	
)	
)	
<i>Defendant.</i>)	

DEFENDANT’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendant, The Rector and Visitors of George Mason University (“Mason”),¹ by and through counsel, moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss Plaintiff’s complaint with prejudice.

The grounds for the motion are as follows:

1. Count I and Count III assert claims under 42 U.S.C. § 1983, but plaintiff has failed to state a viable claim because she has not alleged “a person” acting under the color of state law deprived her of a constitutional right. Neither a State nor its officials acting in their official capacities are “persons” under § 1983. Mason is an arm of the

¹ The complaint names the wrong defendant. Pursuant to Virginia Code § 23.1-1500(A) George Mason University operates under the corporate name “The Rector & Visitors of George Mason University.”

Commonwealth of Virginia and entitled to the same sovereign immunity. Mason is therefore not subject to suit under § 1983. As such, Plaintiff has failed to state a plausible claim under 42 U.S.C. § 1983.

2. Count II asserts a breach of contract claim against Mason, a state agency and arm of the Commonwealth of Virginia. Claims for monetary damages by a private party against a state agency are barred by the Eleventh Amendment. As such, the contract claim is barred in federal court by the Eleventh Amendment and must be dismissed with prejudice.

The legal arguments outlined above are set forth at length in the accompanying Memorandum of Points and Authorities. This motion is based on the complaint filed in this action, this motion, the accompanying memorandum of points and authorities and exhibits thereto, any subsequently filed reply brief and any oral argument presented by the Defendant during the hearing for this motion.

October 10, 2022

RESPECTFULLY SUBMITTED

_____/s/_____

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Mason University*

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October 2022, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to counsel of record in this case.

_____/s/_____
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